

Regular Session, 2013

SENATE BILL NO. 86

BY SENATOR MORRELL

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

COMMERCIAL REGULATIONS. Provides relative to the Louisiana Mental Health Counselor Licensing Act. (1/1/14) (2/3 - CA7s2.1(A))

1 AN ACT

2 To amend and reenact R.S. 37:1106(A) and (D) and 1110 and to enact R.S. 37:1107(F),

3 1116(C), and 1123, relative to the Louisiana Mental Health Counselor Licensing

4 Act; to provide for fees; to provide for temporary licenses and registrations; to

5 provide for criminal history record information; to provide for costs of administrative

6 proceedings; to provide for terms, procedures, and conditions; and to provide for

7 related matters.

8 Be it enacted by the Legislature of Louisiana:

9 Section 1. R.S. 37:1106(A) and (D) and 1110 are hereby amended and reenacted and

10 R.S. 37:1107(F), 1116(C), and 1123 are hereby enacted to read as follows:

11 §1106. Fees; application for license; **violations; penalties**

12 A.**(1)** ~~The board shall collect the following fees:~~ **Fees established and**

13 **collected by the board pursuant to this Chapter shall be set by rule and shall not**

14 **exceed the following maximum amounts:**

- 15 (1) ~~For privileging review and registration, a fee of \$100 per occurrence.~~
- 16 (2) ~~For applications, licenses, and seals, a fee of \$200.~~
- 17 (3) ~~For renewal of licenses, a fee of \$150.~~

1 days after the decision of the board becomes final. No license, certificate, or
2 registration shall be issued, reinstated, or renewed until such costs and fees have
3 been paid.

4 * * *

5 §1107. Requirements for licensed professional counselor; temporary license or
6 registration; renewal of license or registration

7 * * *

8 F.(1) Pending the results of the criminal history information inquiry, the
9 board may issue a temporary license or registration authorizing the practice of
10 licensed professional counseling, for a period of time not to exceed ninety
11 calendar days from the date of issuance.

12 (2) The board shall adopt rules and regulations in accordance with the
13 Administrative Procedure Act establishing the necessary qualifications,
14 requirements, and formalities for the issuance of such licenses and registrations
15 as are necessary for the adequate protection of the health and welfare of the
16 citizens of this state.

17 * * *

18 §1110. Denial, revocation, or suspension of license or registration

19 A. The board shall withhold, deny, revoke, or suspend any license or
20 registration issued or applied for in accordance with the provisions of this Chapter
21 or otherwise discipline a licensee upon proof that the applicant, ~~or~~ licensee, or
22 registrant:

23 (1) Has been convicted in a court of competent jurisdiction of a felony, the
24 conviction being final, or upon a plea of guilty or nolo contendere to a felony, the
25 record of conviction or plea being conclusive evidence thereof.

26 (2) Has been convicted in a court of competent jurisdiction of any crime or
27 offense which reflects the inability of the practitioner to practice with due regard for
28 the health and safety of clients or patients.

29 (3) Has violated the code of ethics adopted by the board.

1 (4) Is abusing drugs or alcohol to an extent or in a manner dangerous to any
2 other person or the public, or to an extent that said use impairs his ability to perform
3 the work of a licensee **or registrant**.

4 (5) Has impersonated another person holding a professional license **or**
5 **registration** issued pursuant to this Chapter or allowed another person to use his
6 license **or registration**.

7 (6) Has used fraud or deception in applying for a license **or registration** **or**
8 in taking an examination provided for in this Chapter.

9 (7) Has allowed his name or license **or registration** issued under this Chapter
10 to be used in connection with any person or persons who practice outside of the area
11 of their training, experience, or competence.

12 (8) Is legally adjudicated mentally incompetent, the record of such
13 adjudication being conclusive evidence thereof.

14 (9) Has willfully or negligently violated any of the provisions of this Chapter.

15 B. Notice of denial, revocation, suspension, or disciplinary action shall be
16 sent to the applicant, ~~or licensee,~~ **or registrant** by registered mail or personal service
17 setting forth the particular reasons for the proposed action and fixing a date at which
18 time the applicant or licensee shall be given an opportunity for a prompt and fair
19 hearing. The written notice shall be sent to the person's last known address, but the
20 nonappearance of the person shall not prevent such a hearing. For the purpose of
21 such hearing, the board may subpoena persons, books, and papers, on its own behalf
22 or on behalf of the applicant, ~~or licensee,~~ **or registrant** who may appear by counsel
23 or personally in his own behalf.

24 C. On the basis of any hearing or upon default of applicant, ~~or licensee,~~ **or**
25 **registrant**, the board shall make a determination specifying its findings of fact and
26 conclusions of law. A copy of such determination shall be sent by registered mail
27 or served personally upon the applicant, ~~or licensee,~~ **or registrant**. The decision of
28 the board denying, revoking, or suspending the license **or registration**, shall become
29 final thirty days after receipt of the copy of the determination unless within said

1 period the applicant, ~~or licensee,~~ or registrant appeals the decision as provided by
2 the Louisiana Administrative Procedure Act, R.S. 49:950 et seq. No such appeal
3 while pending appropriate court action shall supersede such denial, revocation, or
4 suspension. All proceedings and evidence presented at hearings before the board
5 may be admissible during appellate proceedings.

6 D. Every order and judgment of the board shall take effect immediately on
7 its promulgation unless the board in such order or judgment fixes a probationary
8 period for applicant, ~~or licensee,~~ or registrant. Such order and judgment shall
9 continue in effect until expiration of any specified time period or termination by a
10 court of competent jurisdiction. The board shall notify all licensees or registrants
11 of any action taken against a licensee and may make public its orders and judgments
12 in such manner and form as it deems proper if such orders and judgments are not
13 consent orders or compromise judgments.

14 E. The board is authorized to suspend the license of a licensee and the
15 registration of a registrant for a period not exceeding two years. At the end of this
16 period, the board shall re-evaluate the suspension and may recommend to the
17 chairman the reinstatement or revocation of the license or registration. A person
18 whose license or registration has been revoked under the provisions of this Section
19 may apply for reinstatement after a period of not less than two years from the date
20 such denial, or revocation is legally effective. The board may, upon favorable action
21 by a majority of the board members present and voting, recommend such
22 reinstatement.

23 * * *

24 §1116. Licensure application for marriage and family therapists; temporary license
25 or registration

26 * * *

27 C. (1) Pending the results of the criminal history information inquiry,
28 the board may issue a temporary license or registration authorizing the practice
29 of marriage and family therapy, for a period of time not to exceed ninety

1 calendar days from the date of issuance.

2 (2) The board shall adopt rules and regulations in accordance with the
3 Administrative Procedure Act establishing the necessary qualifications,
4 requirements, and formalities for the issuance of such licenses and registrations
5 as are necessary for the adequate protection of the health and welfare of the
6 citizens of this state.

7 * * *

8 §1123. Louisiana Licensed Professional Counselors Board of Examiners;
9 authorization to obtain criminal history record information

10 A. As used in this Section, the following terms shall have the following
11 meanings:

12 (1) "Applicant" means an individual who has made application to the
13 board for the issuance, renewal, or reinstatement of any form of licensure which
14 the board is authorized by law to issue.

15 (2) "Board" means the Louisiana Licensed Professional Counselors
16 Board of Examiners.

17 (3) "Bureau" means the Louisiana Bureau of Criminal Identification and
18 Information of the office of state police within the Department of Public Safety
19 and Corrections.

20 (4) "Criminal history record information" means information collected
21 by state and federal criminal justice agencies on individuals consisting of
22 identifiable descriptions and notations of arrests, detentions, indictments, bills
23 of information, or any formal criminal charges, and any disposition arising
24 therefrom, including sentencing, criminal correctional supervision and release.
25 It shall not include intelligence information gathered for investigatory purposes
26 or any identification information which does not indicate involvement of the
27 individual in the criminal justice system.

28 (5) "FBI" means the Federal Bureau of Investigation of the United States
29 Department of Justice.

1 **(6) "Licensure" means any license, certification, or registration which**
2 **the board is authorized to issue.**

3 **B. In addition to any other requirements established by board rules, the**
4 **board may require an applicant, as a condition of eligibility for licensure:**

5 **(1) To submit a full set of fingerprints, in a form and manner prescribed**
6 **by the board.**

7 **(2) To permit the board to request and obtain state and national criminal**
8 **history record information on the applicant.**

9 **(3) To pay the reasonable costs incurred by the board in requesting and**
10 **obtaining state and national criminal history record information on the**
11 **applicant.**

12 **C. In accordance with the provisions and procedure prescribed by this**
13 **Section, the board may request and obtain state and national criminal history**
14 **record information from the bureau and the FBI relative to any applicant for**
15 **licensure whose fingerprints the board has obtained pursuant to this Section for**
16 **the purpose of determining the applicant's suitability and eligibility for**
17 **licensure.**

18 **D. Upon request by the board and upon the board's submission of an**
19 **applicant's fingerprints, and such other identifying information as may be**
20 **required, the bureau shall conduct a search of its criminal history record**
21 **information relative to the applicant and report the results of its search to the**
22 **board within sixty days from receipt of any such request. The bureau may**
23 **charge the board a reasonable processing fee for conducting and reporting on**
24 **any such search.**

25 **E. If the criminal history record information reported by the bureau to**
26 **the board does not provide grounds for disqualification of the applicant for**
27 **licensure under the applicable law administered by the board, the board shall**
28 **have the authority to forward the applicant's fingerprints and such other**
29 **identifying information as may be required to the FBI with a request for a**

1 search of national criminal history record information relative to the applicant.

2 F. Any and all state or national criminal history record information
3 obtained by the board from the bureau or FBI which is not already a matter of
4 public record shall be deemed nonpublic and confidential information restricted
5 to the exclusive use by the board, its members, officers, investigators, agents,
6 and attorneys in evaluating the applicant's eligibility or disqualification for
7 licensure. No such information or records related thereto shall, except with the
8 written consent of the applicant or by order of a court of competent jurisdiction,
9 be released or otherwise disclosed by the board to any other person or agency.

10 G. Upon investigation of the application and other evidence submitted,
11 the board shall notify each applicant that the application and evidence
12 submitted for consideration is satisfactory and accepted, or is unsatisfactory
13 and rejected. If an application is rejected, such notice shall state the reasons for
14 the rejection and the applicant's right to a compliance hearing in accordance
15 with the rules and regulations promulgated by the board.

16 Section 2. This Act shall become effective on January 1, 2014.

The original instrument and the following digest, which constitutes no part of the legislative instrument, were prepared by Michelle Ducharme.

DIGEST

Present law provides the fee schedule for the Louisiana Licensed Professional Counselors Board of Examiners ("board").

Proposed law provides the maximum amount of each fee the board may collect as follows:

(1)	Application of privilege, credential, or registration	\$200
(2)	Application of licensure	\$325
(3)	Renewal of privilege, credential, registration, or license	\$300
(4)	Examination or reexamination	\$250
(5)	Late fees	\$100
(6)	Failure to update contact information with board	\$100
(7)	Reissuance of privilege, credential, registration, or license	\$50
(8)	Name changes on record	\$50

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|------|--|------|
| (9) | Copies of documents in the board's possession | \$50 |
| (10) | Formal verification of status of any privilege, credential, registration, or license | \$25 |

Proposed law provides that the board shall not increase any fee by more than a total of 15% over a consecutive three year period.

Present law allows the board to assess and collect fines in an amount not to exceed \$500.

Proposed law increases the amount the board may assess and collect in fines from not to exceed \$500 to not to exceed \$5,000.

Proposed law authorizes the board to assess all costs incurred in connection with any disciplinary proceeding, including but not limited to the costs of an investigator, a stenographer, legal fees, or witness fees, and any costs and fees incurred by the board on any judicial review or appeal.

Proposed law provides for payment of costs and fees and prohibits any license, certificate, or registration from being issued, reinstated, or renewed until such costs and fees have been paid.

Proposed law provides for the issuance of temporary licenses and registrations effective for a period of 90 calendar days from the date of issuance.

Present law provides for the denial, revocation, or suspension of licenses.

Proposed law maintains present law and provides for the denial, revocation, or suspension of registrations.

Proposed law authorizes the board to require an applicant, as a condition of eligibility for licensure, to do the following:

- (1) Submit a full set of fingerprints, in a form and manner prescribed by the board.
- (2) Permit the board to request and obtain state and national criminal history record information on the applicant.
- (3) Pay the reasonable costs incurred by the board in requesting and obtaining state and national criminal history record information on the applicant.

Proposed law provides that the board may request and obtain state and national criminal history record information from the Louisiana Bureau of Criminal Identification and Information of the office of state police within the Department of Public Safety and Corrections ("bureau") and the Federal Bureau of Investigation ("FBI") relative to any applicant for licensure whose fingerprints the board has obtained pursuant to law for the purpose of determining the applicant's suitability and eligibility for licensure.

Proposed law provides that upon request by the board and upon the board's submission of an applicant's fingerprints, and such other identifying information as may be required, the bureau shall conduct a search of its criminal history record information relative to the applicant and report the results of its search to the board within 60 days from receipt of any such request. The bureau may charge the board a reasonable processing fee for conducting and reporting on any such search.

Proposed law provides that if the criminal history record information reported by the bureau to the board does not provide grounds for disqualification of the applicant for licensure under the applicable law administered by the board, the board shall have the authority to forward

the applicant's fingerprints and such other identifying information as may be required to the FBI with a request for a search of national criminal history record information relative to the applicant.

Proposed law provides that any and all state or national criminal history record information obtained by the board from the bureau or FBI which is not already a matter of public record shall be deemed nonpublic and confidential information restricted to the exclusive use by the board, its members, officers, investigators, agents, and attorneys in evaluating the applicant's eligibility or disqualification for licensure. No such information or records related thereto shall, except with the written consent of the applicant or by order of a court of competent jurisdiction, be released or otherwise disclosed by the board to any other person or agency.

Proposed law provides that upon investigation of the application and other evidence submitted, the board shall notify each applicant that the application and evidence submitted for consideration is satisfactory and accepted, or unsatisfactory and rejected. If an application is rejected, such notice shall state the reasons for such rejection and the applicant's right to a compliance hearing in accordance with the rules and regulations promulgated by the board.

Effective January 1, 2014.

(Amends R.S. 37:1106(A) and (D) and 1110; adds R.S. 37:1107(F), 1116(C), and 1123)